IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9942 of 1993

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OSWAL SHIKSHAN & RAHAT SANGH & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR JAYANT P BHATT for Petitioner(s) : 1,
MS MINI NAIR, AGP for Respondent(s) : 1 - 2.
MR JR NANAVATI for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 17/07/2007

ORAL JUDGMENT

This is a writ petition preferred under Article 226 of the Constitution of India against the Town Planning Scheme No.2 of Jamnagar.

The petitioner is a public charitable trust (hereinafter referred to as, **“the Trust”**) connected with eduction. The Trust owns land bearing Survey No.115 admeasuring 90549 sq.meters situated at Jamnagar. The Trust runs a school on the said land Survey No.115 and is having a hostel and a playground for the school children. Under the impugned Town Planning Scheme No.2, the said land Survey No.115 was given original plot no.4. Under the impugned Town Planning Scheme, the Trust has been allotted final plot no.4 admeasuring 82679.00 sq.meters. The remainder of the land has been given final plot no.2 and is reserved for a 15 meter wide public road and for commercial purpose. It is this distribution which has aggrieved the Trust.

At the time of hearing of this petition, Mr.Bhatt has submitted that pending this petition there are certain changes in the circumstances which warrant variation in the sanctioned Town Planning Scheme No.2 in so far as the original plot no.4 is

concerned. He has submitted that initially the final plot no.2 was reserved for constructing a building for Jamnagar Area Development Authority, the respondent no.3 herein and for commercial purpose. Now the said authority has constructed a building on some other land and has also developed the said land for commercial purpose. As on now, the purpose for reservation does not survive. This calls for a variation. He has also relied upon the observations made in paragraphs 24 to 27 of the judgment of the Hon'ble Supreme Court in the matter of **Bangalore Medical Trust v/s. B.S.Muddappa and others** [(1991)4 SCC 54].

It is well-settled that a Town Planning Scheme once sanctioned becomes part of the statute. The same cannot be challenged on the grounds other than on which a statute can be challenged before the Court of law. Except the aforesaid change in circumstances, no case is made out to interfere with the Town Planning Scheme. In the circumstances, the petitioner Trust may make an appropriate representation to the Jamnagar Area Development Authority, the respondent

no.3 herein and the Commissioner, Jamnagar Municipal Corporation for making variation in the sanctioned Town Planning Scheme No.2, Jamnagar. The petitioner Trust may also rely upon the above referred observations made by the Hon'ble Supreme Court. If such a representation is made, the same shall be considered in accordance with law and keeping in view that the land in question is utilised for education purpose and for the playground for the school children.

Subject to the above observations, the petition is disposed of. Rule is discharged. Interim relief, if any, is vacated. The parties shall bear their own cost.

Mr.Bhatt has submitted that pending such representation, the respondents-authorities may not take over possession of final plot no.2 from the petitioner Trust.

It is directed that in the event the petitioner Trust makes a representation, as observed

hereinabove, within six weeks from today, the possession of final plot no.2 may not be taken over from the petitioner Trust till such representation is considered and decided and the decision is communicated to the petitioner Trust.

(Ms. R.M.Doshit, J.)

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